

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: HEALTH CARE FINANCING ADMINISTRATION**

1. TRANSMITTAL NUMBER:

1 0 - 1 8

2. STATE:

Michigan

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH FINANCING ADMINISTRATION
DEPARTMENT OF HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 1, 2010

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:
42 CFR 433.36

7. FEDERAL BUDGET IMPACT:

a. FFY 11 \$ -0-
b. FFY 12 \$ (185,000)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
Preprint pages 53 thru 53c, and Attachment 4.17-A, pages 1
thru 5.

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):

Preprint pages 53 thru 53c, and Attachment 4.17-A, pages 1
thru 5.

10. SUBJECT OF AMENDMENT:

Estate Recovery

11. GOVERNOR'S REVIEW (Check One):

- ☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED:
Stephen Fitton, Director
Medical Services Administration

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Stephen Fitton

13. TYPED NAME:
Stephen Fitton

14. TITLE:
Director, Medical Services Administration

15. DATE SUBMITTED:
September 29, 2010

16. RETURN TO:

Medical Services Administration
Program/Eligibility Policy Division - Federal Liaison Unit
Capitol Commons Center - 7th Floor
400 South Pine
Lansing, Michigan 48933

Attn: Nancy Bishop

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

18. DATE APPROVED:

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPE/NAME:

22. TITLE:

23. REMARKS:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

General Program Administration

Citation

42 CFR 433.36(c)
1902(a)(18) and
1917(a) and (b) of
the Act

4.17 Liens and Adjustments or Recoveries

(a) Liens

— The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36(c) – (g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

— The State imposes liens on real property on account of benefits incorrectly paid.

— The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonable be expected to be discharged are specified in Attachment 4.17-A.

X The State imposes liens on both real and personal property of an individual after the individual's death.

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h) – (i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/ME or other medical institution.

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X Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2) The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B).
- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services and related hospital and prescription drug services.

X In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

All services covered by the Michigan Medicaid Program.

- (4) X The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.

X The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual.

 The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long term care services provided on behalf of the individual.

X The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long term care services provided on behalf of the individual to the extent described below:

All assets and resources not otherwise excluded under this provision of the Michigan Medicaid Program.

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(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917(b)(2) of the Act and regulations at 42 CFR 433.36 (h) – (i)

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
 - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
 - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.
 - (c) a care-taker relative who was residing in the medical assistance recipient's home for a period of at least 2 years immediately before the date of the medical assistance recipient's admission to a medical institution and who establishes that he or she provided care that permitted the medical assistance recipient to reside at home rather than in an institution.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

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(d) Attachment 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or a daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
 - estate
 - individual's home,
 - equity interest in the home,
 - residing in the home for at least 1 or 2 years,
 - on a continuous basis,
 - discharge from the medical institution and return home, and
 - lawfully residing.
- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue hardship.
- (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
- (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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Liens and Adjustments or Recoveries

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

The State is not a TEFRA State. Determination of permanent institutionalization is not required or performed.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR § 433.36(f):

Because 42 CFR 433.36(f) is a provision required only if a State chooses to impose a lien against an individual's real property prior to his or her death, and the State is not a TEFRA State, the State does not have nor need such criteria.

3. The State defines the terms below as follows:

- estate – MCL 700.1104(b) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout the administration. ("as the property is originally constituted and as it exists throughout administration" describes an asset that has changed forms. As an example: an individual has real estate which is sold in parcels and the proceeds from the sale of the separate parcels are invested in CDs. Even though the asset is no longer in its original form, it is still part of the estate when the estate is distributed.) Additionally, the State's Estate Recovery statute (MCL 400.112h (a)) defines estate as "... all property and other assets included within an individual's estate that is subject to probate administration. . ."
- individual's home – any shelter used by an individual or spouse as a place of residence in which the individual has a home-ownership interest
- equity interest in the home – any equitable right, title or interest in real property
- residing in the home for a at least one or two years on a continuous basis – occupancy of an individual's home by a sibling, child or other care-taker relative using the home as the principal place of residence
- discharge from the medical institution and return home – the attending physician has signed an order for discharge from the nursing home, following which the individual has returned to reside in his or her own home, and

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- lawfully residing – use of the home as a primary place of residence by a spouse, a minor, blind or disabled child, a sibling or other caretaker relative. Such property must be the spouse's, child's, sibling's or other care-taker relative's mailing address or legal address for driver's licensure and/or voter registration.

4. The State defines undue hardship as follows:

An undue hardship exists when (1) the estate subject to recovery is the sole-income producing asset of the survivors (where such income is limited), including, but not limited to a family farm or business; (2) the estate subject to recovery is a home of modest value; or (3) the State's recovery of a decedent's estate would cause a caretaker relative to become or remain eligible for Medicaid.

There is a presumption that no hardship exists if the hardship resulted from estate planning methods under which assets were diverted in order to avoid estate recovery. The agency will not grant an undue hardship waiver if the granting of such waiver results in the payment of claims to other creditors with a lower priority standing.

The State does not grant any exemptions to individuals who apply for but do not meet the definition of undue hardship as found in MCS 400.112g and provided above.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective.

Review of hardship waivers begins with the State's vendor. The vendor, in accordance with its contract with the State, reviews all incoming waiver applications and makes an initial recommendation to accept or deny and sends it to the estate recovery specialist.

The estate recovery specialist (general duties and responsibilities):

The Estate Recovery Specialist is responsible for duties such as monitoring changes in State and Federal laws pertaining to estate recovery, conducting all undue hardship waiver reviews, monitoring the progress of filed claims in probate, assisting vendor in sending notifications of intent to file to known family members, and ensuring adherence to any time frames or deadlines. Additionally, the Estate Recovery Specialist will be responsible for development, testing and implementation of the ERS automated estate recovery support system to be used by the vendor and assist with development and oversight of dependent match processes. The Specialist is also responsible for approving all correspondence and informational material prior to use and coordinating any issues that arise with the Office of Legal Affairs or the Office of the Attorney General.

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The estate recovery specialist (specific undue hardship waiver duties):

When reviewing an undue hardship waiver, the Estate Recovery Specialist looks at the waiver application, any accompanying documentation, and the recommendation of the vendor to verify information. Based on this information, the Specialist makes a recommendation to approve or deny the waiver application and provides that recommendation to the Court Originated Liability Section Manager.

The Section Manager (general duties and responsibilities):

This position directs the planning, development and implementation of casualty, medical support enforcement and Estate Recovery activities for the Medicaid Program. The position directs the activities of staff in pursuing recovery from these available resources. This position also evaluates various aspects and methods for maximizing reimbursement from liable resources, ensures compliance with Federal Regulations and State Law, plans for and develops Program modifications when necessary due to changes in the insurance industry, court decisions, etc. The position also manages operational processes and procedures, researches and resolves complex or unique issues and performs other related managerial duties.

The Section Manager (specific undue hardship waiver duties):

The Section Manager reviews the specialist's recommendation and waiver materials and makes a final recommendation to the Third Party Liability Division Director.

The Third Party Liability Division Director (general duties and responsibilities):

This position is responsible for the planning, organizing and management of the Third Party Liability Division of the Medical Services Administration. The position supervises and manages the Medicaid reimbursement and revenue enhancement activities for the State of Michigan in accordance with State and Federal laws and regulations. The position has overall management and oversight responsibility for the entire Third Party Liability Program for the State.

The Third Party Liability Division Director (specific undue hardship waiver duties):

The Third Party Liability Division Director, after review of the recommendations forwarded through the levels of staff within the Division has final authority for approving or denying all undue hardship waiver requests and makes the final determination.

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6. The State defines cost-effective as follows:

Recovery is considered cost-effective when the potential recovery amount of the estate exceeds the cost of filing the claim and any legal work dealing with the claim.

7. The State uses the following collection procedures:

The State identifies deceased recipients subject to estate recovery via a match with the Medicaid recipient eligibility file using data from the national Social Security Death index and State Vital Statistics. The match is run monthly. The State may also supplement its match with recipients identified by its estate recovery contractor. Deceased recipients are also identified by obtaining referrals from local DHS offices, service providers, long-term care facilities, attorneys, personal representatives, family members of recipients, and possibly by monitoring newly opened probate court records for high-population counties in Michigan.

Under the Michigan Probate Code, a personal representative is required to publish notice to creditors to present their claims to the estate. The personal representative must send a copy of the published notice to all known creditors of the estate. A known creditor of the decedent is any creditor whose existence is reasonably ascertainable through an investigation of the decedent's records for the 2 years prior to death. (MCL 700.3801(1)) The State will be a creditor ascertainable from review of the decedent's past two years' records; therefore, the State will be a known creditor and the personal representative will be required to send it notice of the probate estate.

The personal representative is also required, by State law to:

- (1) Within 91 days after appointment or other time specified by court rule, a personal representative, who is not a special personal representative or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of an encumbrance that may exist with reference to each listed item.
- (2) The personal representative shall send a copy of the inventory to all presumptive distributees and to all other interested persons who request it, and may also file the original of the inventory with the court. The personal representative shall submit to the court on a timely basis information necessary to calculate the probate inventory fee. (MCL 700.3706)

The personal representative shall keep each presumptive distributee informed of the estate settlement. Until a beneficiary's share is fully distributed, the personal representative shall annually, and upon completion of the estate settlement, account to each beneficiary by supplying a statement of the activities of the estate and of the personal representative, specifying all receipts and disbursements and identifying property belonging to the estate. MCL 700.3703(4)

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That, during the course of administering the estate, the personal representative must provide all interested persons with all of the following:

- (i) A copy of the petition for the personal representative's appointment and a copy of the will, if any, with the notice.
- (ii) A copy of the inventory.
- (iii) A copy of the settlement petition or of the closing statement.
- (iv) Unless waived, a copy of the account, including, but not limited to, fiduciary fees and attorney fees charged to the estate. MCL 700.3705(d)

Within 30 days of learning of the death of a Medicaid recipient who is subject to estate recovery, MDCH mails a Notice of Intent (NOI) to the personal representative of the recipient's estate. If the personal representative is not known, the NOI is sent to the family member contact the recipient listed on their most recent application. The NOI includes the amount owed and an indication that the State intends to file a claim against the estate in probate court to seek reimbursement for payments made by the Medicaid program (not to exceed the value of the estate).

The NOI also indicates that the State may waive recovery in the event that recovery would result in an undue hardship. The NOI provides a contact phone number and address to request an Undue Hardship Application. The NOI also advises that an Undue Hardship Application may be downloaded from the estate recovery website and give the URL. Lastly, the NOI states that adverse decisions may be appealed under the Administrative Procedures Act, (MCL 24.201-24.328) within 60 days of receiving notice of the State's final decision.

Upon confirmation that a case does not meet any statutory exemptions or hardship conditions and that probate has been opened, the State files a claim against the estate and pursues recovery. The State's estate recovery claim is administered through the state probate court system and all claims are subject to review by the probate court.

The probate court's allowance or denial of the State's claim is subject to the appellate review available to all other probate court decisions.

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